



December 20, 2017

Via FOIAonline

FOIA Officer
U.S. Environmental Protection Agency

Re: FOIA request for records relating to the monitoring of humans for glyphosate exposure

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and applicable Environmental Protection Agency (EPA) regulations at 40 C.F.R. § 2.100-2.406. This letter describes the records sought and includes a request for a public interest fee waiver.

I. Description of Records Sought

Please produce records¹ of the following types in EPA's possession, custody, or control:

1. All records from 1995 to January 12, 2017 reflecting or relating to the monitoring of glyphosate in humans, including the monitoring of humans for incidental glyphosate exposure, as required by 7 U.S.C. § 136r(c) ("The Administrator shall undertake such monitoring activities, including, but not limited to monitoring in . . . man . . . as may be necessary for the implementation of this subchapter and of the national pesticide monitoring plan. The Administrator shall establish procedures for the monitoring of man and animals and their environment for incidental [sic] pesticide exposure, including, but not limited to, the quantification of incidental human and environmental pesticide pollution and the secular trends thereof, and identification of the sources of contamination and their relationship to human and environmental

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any EPA office, including, but not limited to, EPA Headquarters offices, and specifically including EPA offices in possession of responsive records.

effects. Such activities shall be carried out in cooperation with other Federal, State, and local agencies.”).

2. All records from 1995 to January 12, 2017 relating to EPA’s procedures for the monitoring of humans for incidental glyphosate exposure, as required by 7 U.S.C. § 136r(c) (“The Administrator shall establish procedures for the monitoring of man and animals and their environment for incidental [sic] pesticide exposure, including, but not limited to, the quantification of incidental human and environmental pesticide pollution and the secular trends thereof, and identification of the sources of contamination and their relationship to human and environmental effects.”).
3. All records from 1995 to January 12, 2017 reflecting or relating to pesticide registrants’ or third party submission of studies or data relating to glyphosate levels in humans, as contemplated by 40 C.F.R. § 159.170 (“Information must also be submitted which concerns exposure monitoring studies that indicate higher levels of risk or exposure than would be expected based on previously available reports, data, or exposure estimates . . . regardless of whether the registrant considers any observed correlation or association to be significant.”).
4. All records relating to (a) the October 2017 Research Letter by Paul J. Mills, et al. entitled *Excretion of the Herbicide Glyphosate in Older Adults Between 1993 and 2016* (<https://jamanetwork.com/journals/jama/article-abstract/2658306>); and/or (b) glyphosate monitoring in connection with the Rancho Bernardo Study of Health Aging (<https://knit.ucsd.edu/ranchobernardostudy>).

II. Request for a Fee Waiver

NRDC requests that EPA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(c)(1)(iii).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). Each of the four factors used by EPA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* EPA, 40 C.F.R. § 2.107(l)(2).

1. *Subject of the request*

The records requested here directly concern “the operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i). Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), “[t]he Administrator shall undertake such monitoring activities, including, but not limited to monitoring in air, soil, water, man, plants, and animals, as may be necessary for the implementation of this subchapter and of the national pesticide monitoring plan. The Administrator shall establish procedures for the monitoring of man and animals and their environment for incidental [sic] pesticide exposure, including, but not limited to, the quantification of incidental human and environmental pesticide pollution and the secular trends thereof, and identification of the sources of contamination and their relationship to human and environmental effects.” 7 U.S.C. § 136r(c). Additionally, registrants such as Dow AgroSciences must submit information pursuant to FIFRA’s regulations “which concerns exposure monitoring studies that indicate higher levels of risk or exposure than would be expected based on previously available reports, data, or exposure estimates.” 40 C.F.R. § 159.170. Thus, records relating to EPA’s procedures for monitoring glyphosate or EPA’s efforts to monitor glyphosate levels in humans pertain to the agency’s statutory duty to monitor pesticide exposure. Registrants also have an obligation to submit monitoring studies to EPA; accordingly, records relating to registrants’ submissions shed light on what monitoring data EPA maintains and reviews..

2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(ii).

According to the research letter published by Paul J. Mills, et al., in October 2017, data collected from the Rancho Bernardo Study of Health Aging between 1993-2016 have demonstrated a threefold increase in mean glyphosate levels excreted in human urine. Paul J. Mills, et al., Excretion of the Herbicide Glyphosate in Older Adults Between 1993 and 2016, *JAMA* (Oct. 24/31, 2017). This significant finding has heightened existing concerns regarding the health risks that glyphosate poses to humans. *See, e.g.*, Alice Park, A Weed Killer Is Increasingly Showing Up in People’s Bodies, *TIME*, (Oct. 26, 2017), <http://time.com/4993877/weed-killer-roundup-levels-humans>; Lorraine Chow, Human Exposure to Glyphosate Has Skyrocketed 500% Since Introduction of GMO Crops, *EcoWatch* (Oct. 25, 2017), <https://www.ecowatch.com/glyphosate-exposure-humans-2501317778.html>.

The public currently lacks information as to whether EPA has established procedures that govern the monitoring of glyphosate levels in humans, and/or whether it has monitored glyphosate levels in humans. Nor is the public aware of whether EPA has requested or reviewed data from other studies monitoring the level of glyphosate in humans. The requested records will inform the public about what steps EPA has taken to

fulfill its statutory obligations to monitor human exposure to glyphosate.

There is more than a reasonable likelihood that these records have informative value to the public. As mentioned above, the recent research finding a drastic increase in glyphosate levels in humans has received significant media attention. The public's concerns relating to levels of glyphosate exposure are intensified by the 2015 finding of the International Agency for Research on Cancer (IARC) that glyphosate is "probably" carcinogenic to humans. *See* Int'l Agency for Research on Cancer, World Health Org., IARC Monographs Volume 112: Evaluation of Five Organophosphate Insecticides and Herbicides 1-2 (Mar. 12, 2015), <http://www.iarc.fr/en/media-centre/iarcnews/pdf/MonographVolume112.pdf>.

We believe that the records requested are either not in the public domain, or not available to the public at large. Disclosure of these documents would thus meaningfully inform public understanding with respect to EPA's monitoring, or not, of glyphosate levels in humans. Moreover, even if some records have already been released to other FOIA requesters, this is not a sufficient ground for rejecting a fee waiver here. *See Carney v. U.S. Dept. of Justice*, 19 F.3d 807, 815-16 (2d Cir. 1994). If EPA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and may agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure.*

Because NRDC is a "representative of the news media," as explained in Part II.C below, EPA must presume that this disclosure is likely to contribute to public understanding of its subject. 40 C.F.R. § 2.107(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC's expertise in pesticide regulation, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability and will to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal.

NRDC has worked extensively to protect the public from unreasonable risks posed by pesticides, and has a strong, demonstrated interest in educating the public about regulatory activities that protect public health from toxic pesticides, including glyphosate. *See, e.g.*, Jennifer Sass, NRDC, Medical Journals: Monsanto Glyphosate in Pee, Bad for Health (Oct. 24, 2017), <https://www.nrdc.org/experts/jennifer-sass/medical-journals-calling-out-monsantos-glyphosate-pollution>; Jennifer Sass, NRDC, Updated Ag Health Study of Glyphosate and Cancer (Nov. 15, 2017), <https://www.nrdc.org/experts/jennifer-sass/updated-ag-health-study-glyphosate-and-cancer>; Jennifer Sass, NRDC, Split Within EPA on Glyphosate Carcinogenicity (Mar. 28, 2017), <https://www.nrdc.org/experts/jennifer-sass/split-within-epa-glyphosate-carcinogenicity>; NRDC, EPA Glyphosate Assessment Makes U.S. an Outlier on a Growing Global Consensus of

Chemical's Cancer Danger (Sep. 16, 2016), <https://www.nrdc.org/media/2016/160916>; NRDC, Comments from the Natural Resources Defense Council to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) (Nov. 13, 2016), *available at* <https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0501>; NRDC, Toxic Chemicals, <https://www.nrdc.org/issues/toxic-chemicals> (last visited Dec. 18, 2017). There is thus a strong likelihood that disclosure of the requested records to NRDC will lead to increased public understanding of EPA's monitoring of glyphosate levels in humans and how that may affect its evaluations of glyphosate's cancer risk. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of mercury effluent limitations under the Clean Water Act. 40 C.F.R. § 2.107(l)(2)(iii). When combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." *Id.* § 2.107(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of December 2017, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org>, is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than three million members and online activists who receive regular communications on urgent environmental issues. This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions>.
- NRDC updates and maintains several social media accounts: Facebook (883,940 followers), Twitter (282,000 followers), Instagram (121,000 followers), YouTube (21,133 subscribers), and LinkedIn (14,492 followers). We also use NRDC also is a regular contributor to Medium and the Huffington Post.

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post; and has more than fifty staff members dedicated to communications work. Some examples of these contributions include:

- Article, “Interior Department worked behind the scenes with energy industry to reverse royalties rule,” *Wash. Post*, Oct. 6, 2017 (discussing documents obtained through a FOIA request submitted by NRDC and quoting NRDC Senior Policy Advocate Theo Spencer);
- Documentary, *Sonic Sea* (2016), featured on the Discovery Channel (directed and produced by NRDC Deputy Director of Communications Daniel Hinerfeld);
- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates);
- Congressional testimony, David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012;
- Conference brochure, “World Business Summit on Climate Change,” May 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- NRDC recently obtained through FOIA and publicized emails between the Trump transition team and industry officials regarding reversal of Obama-era preliminary restrictions on the proposed Pebble Mine. This cast light on an issue of considerable public interest. *See, e.g.,* Kevin Bogardus and Dylan Brown, “‘Homework assignment’ — how Pebble lobbied Trump’s EPA,” *E&E News*, June 8, 2017.

- In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe.” See also Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report).
- NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure the safety of these drug additives. See also P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report).
- NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. See *Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report); see also William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC).
- NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. See *Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. See, e.g., “Protest Raised over New Tests of Naval Sonar,” *Nat’l Pub. Radio, All Things Considered*, July 24, 2007.
- NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. See Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004.

- NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents. NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22.
- Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002; Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19.
- Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp>. The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; *see also* Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report).²

In short, NRDC has proven its ability to digest, synthesize, and quickly disseminate to a broad audience newsworthy information gleaned through FOIA requests like this one.

4. *Significance of the contribution to public understanding*

The disclosure of these records "is likely to contribute 'significantly' to public understanding of government operations and activities." 40 C.F.R. § 2.107(l)(2)(iv). The records requested shed light on matters of considerable public interest and concern: whether EPA is complying with its statutory duties under FIFRA to monitor human pesticide exposure; EPA's monitoring of glyphosate levels in humans; and how this monitoring or lack thereof may affect EPA's evaluation of the cancer and other health risks posed by glyphosate.

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. *See, e.g.*, Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005; Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003; Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002.

Glyphosate is the most widely used pesticide in the United States, and scientists are concerned that glyphosate may be widespread in food and waters across the country. *See, e.g.,* Carey Gillam, FDA Resumes Testing Foods For Weed Killer, Safety Questions Grow, *Huffpost* (June 8, 2017), http://www.huffingtonpost.com/entry/fda-resumes-testing-foods-for-weed-killer-safety-questions_us_593843b2e4b014ae8c69dd1b; Douglas Main, Glyphosate Now the Most-Used Agricultural Chemical Ever, *Newsweek* (Feb. 2, 2016), <http://www.newsweek.com/glyphosate-now-most-used-agricultural-chemical-ever-422419>; Elizabeth Grossman, What Do We Really Know About Roundup Weed Killer?, *National Geographic* (Apr. 23, 2015), <http://news.nationalgeographic.com/2015/04/150422-glyphosate-roundup-herbicide-weeds>. Given evidence of widespread human exposure to glyphosate, the public has a significant interest in the extent to which glyphosate is accumulating in the human body, and whether EPA is monitoring it, or has mechanisms in place to monitor it.

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite for a fee waiver because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); EPA, 40 C.F.R. § 2.107(l)(1), (3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); *see Natural Res. Def. Council v. United States Env’tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about EPA’s monitoring of glyphosate levels in humans.

C. NRDC Is a Media Requester

Even if EPA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and EPA’s FOIA regulations, 40 C.F.R. § 2.107(c)(1)(iii). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also* 40 C.F.R. § 2.107(b)(6) (defining “[r]epresentative of the news media”); *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC

published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 40 C.F.R. § 2.107(b)(6) (“Examples of news media include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium and the Huffington Post. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained by NRDC as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with EPA's FOIA regulations at 40 C.F.R. § 2.107(c)(1)(iv) for all or a portion of the requested records. *See* 40 C.F.R. § 2.107(l)(4). Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email responsive records to me at kmorrison@nrdc.org (please note that this email address can receive emails with attachments totaling a maximum of 10 MB). If it is not possible to email the records, please mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; EPA's search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104 (describing response deadlines). If EPA determines that any of the records I've described above are already publicly available, please let me know where to find them.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

/s/ Kaitlin Morrison

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